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**Statement of Chairman Wilma B. Liebman and Member Peter C. Schaumber
Concerning the District of Columbia Circuit's Laurel Baye Healthcare Decision**

After very careful consideration, we have determined that, as a quorum of the National Labor Relations Board, we will continue to issue decisions and orders in unfair labor practice and representation cases. While a recent panel decision of the United States Court of Appeals for the District of Columbia Circuit held that we lack the authority to do so, two appellate courts have upheld our authority, and the issue is pending before seven other Circuits. Our original determination to act as a two-member Board was supported by a legal opinion that the Board earlier had sought from the Department of Justice's Office of Legal Counsel.

We believe that the Board has an important public duty to keep functioning, and to avoid an indefinite shutdown in its decision-making, where (as here) there is a reasonable legal basis for concluding that the Board can act. We remain convinced, as the First Circuit and Seventh Circuit have held, that such a basis for action exists under our statute. And we believe that by continuing to act on cases, we will be able to finally resolve a substantial number of those disputes. The parties in many cases that have been decided by the Board have accepted the Board's decisions. In other cases, while the merits of the Board's decision have been challenged, the authority of the Board, as now constituted, to act has not been attacked.

With great respect for the District of Columbia Circuit Court and the panel that decided *Laurel Baye Healthcare*, we believe that the panel decision was incorrect. Accordingly, we intend, by the end of May, to petition the panel, and the full Court, to revisit the panel's ruling.

Our decision not to adhere to the District of Columbia Circuit's ruling is consistent with the traditional policy of the Board. Historically, the Board, in selected cases, has chosen to adhere to its view of the law, where it respectfully disagrees with an appellate court's adverse decision. This step enables the Board's position to be presented to other Circuits and, where appropriate, to the Supreme Court.

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